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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,689	07/09/2003	Robert L. Doubler	2131.000019	8552
43541	7590	09/29/2006	EXAMINER	
WOOD, HERRON & EVANS (ZIMMER SPINE)			REESE, DAVID C	
2700 CAREW TOWER			ART UNIT	
441 VINE STREET			PAPER NUMBER	
CINCINNATI, OH 45202			3677	

DATE MAILED: 09/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/618,689

Applicant(s)

DOUBLER ET AL.

Examiner

David C. Reese

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 6-9, 11, 12, 15, 16 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10, 13, 17, 19-26 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

THIS FINAL ACTION IS RESPONSIVE TO THE AMENDMENT FILED 7/21/2006.

- Claim 26 was added.
- Claims 1-2 were amended.
- Claims 6-9, 11-12, 15-16, and 18 are withdrawn.
- Claims 1-26 are pending.

#### ***Claim Objections***

[1] Claim(s) 1-2 were previously objected to because of informalities. Applicant has successfully addressed these issues in the amendment filed on 7/21/2006. Accordingly, the objection(s) to the claim(s) 1-2 have been withdrawn.

#### ***Claim Rejections - 35 USC § 102***

[2] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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[3] Claims 1-5, 17, and 26 are rejected under 35 U.S.C. 102(b) as clearly anticipated by Batten, US-4,737,059, because the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country more than one (1) year prior to the application for patent in the United States.

The shape and appearance of Batten is identical in all material respects to that of the claimed design, *Hupp v. Siroflex of America Inc.*, 122 F.3d 1456, 43 USPQ2d 1887 (Fed. Cir. 1997).

As for Claim 1, Batten discloses a linear fastener system (1) (see figure below) comprising:

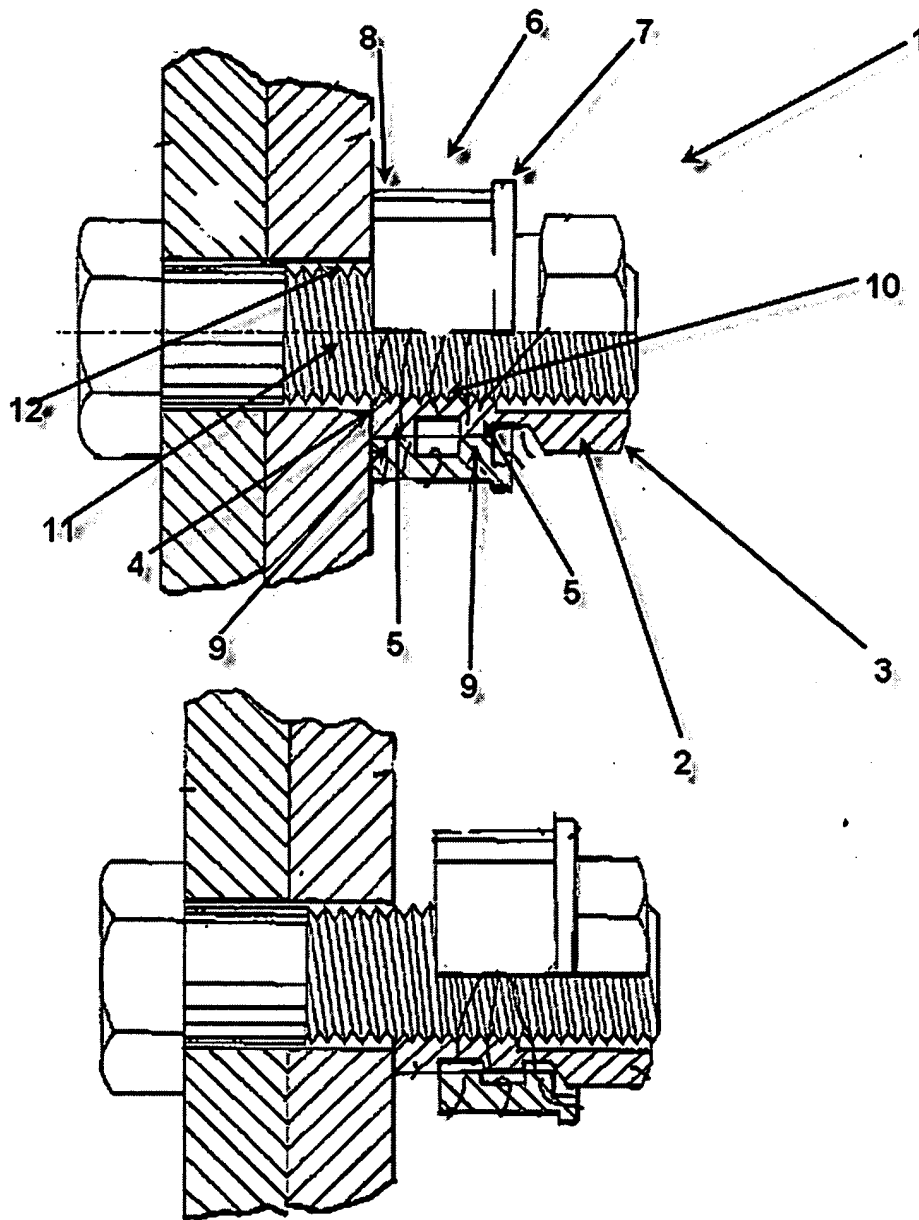
a collet member (2) having a base end (4), a top end (3), an inner engaging surface (10), and an outer ribbed surface (5) positioned about a central axis;

a compression ring member (6) having a base end (8), a front end (7), an inner ribbed surface (9), and an outer surface (6) positioned about a central axis;

said inner ribbed surface (9) of said compression ring member (6) being constructed and arranged for coaxial alignment and overlapping engagement with respect to said outer ribbed surface (5) of said collet member (2), said compression ring member (6) non-rotationally linearly traversable with respect to said outer ribbed surface (5) of said collet member (2) between a first release position (bottom figure) and a second engaged position (top figure), wherein said engaged position (top figure) results in said outer ribbed surface (5) of said collet member (2) and said inner ribbed surface (9) of said compression ring (6) compressing said collet member (2) and tensilely loading said compression ring (6) member to engage a shank member (11) having an outer gripping surface (12), and wherein said release position (bottom figure) results in

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expansion of said collet member (2) thereby releasing said outer gripping surface (12) of said shank member (11).



Re: Claim 2, wherein said shank member (11) includes a first end and a second end.

Re: Claim 3, wherein said ribbed outer surface (5) of said collet member (2) includes at least one outwardly and circumferentially extending rib (5), each said rib (5) including a first ramp surface to facilitate coaxially aligned linear overlapping movement of said compression ring (6) in relation to said collet member (2) for engagement thereof, and a second ramp surface to facilitate linear removal of said compression ring (6) from said collet member (2).

Re: Claim 4, wherein said inner engaging surface (10) of said collet member (2) is constructed and arranged with a conjugate shape in relation to said outer gripping surface (12) of said shank member (11).

Re: Claim 5, wherein said inner engaging surface (10) of said collet member (2) constructed and arranged with internal threads (10).

Re: Claim 17, wherein said outer ribbed surface (5) of said collet member (2) and said inner ribbed surface (9) of said compression ring member (6) are constructed and arranged to maintain an axially aligned interfitting relationship in said release position (bottom figure).

As for Claim 26, Batten discloses a linear fastener system (1) (see figure above) comprising:

a collet member (2) including an outer ribbed surface (5) defining peaks and valleys, and an inner surface (10) adapted to grip a corresponding surface (12) of a shank (11) in a locked condition of said fastener system (top figure);

a compression ring (6) including an inner ribbed surface (9) defining peaks and valleys corresponding to said peaks and valleys (5) of said collet member (2);

the linear fastener system having a locked condition (top surface) wherein said peaks of said collet member (2) and said peaks of said compression ring (6) are in confronting alignment,

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and an unlocked condition (bottom figure) wherein said peaks of said collet member (2) are disposed in said valleys of said compression ring (6).

[4] Claims 1-5, 10, 13, and 17 are rejected under 35 U.S.C. 102(b) as clearly anticipated by Freedland et al., US-6,162,234, because the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country more than one (1) year prior to the application for patent in the United States.

The shape and appearance of Freedland et al. is identical in all material respects to that of the claimed design, *Hupp v. Siroflex of America Inc.*, 122 F.3d 1456, 43 USPQ2d 1887 (Fed. Cir. 1997).

As for Claim 1, Freedland et al. discloses a linear fastener system (see figure below) comprising:

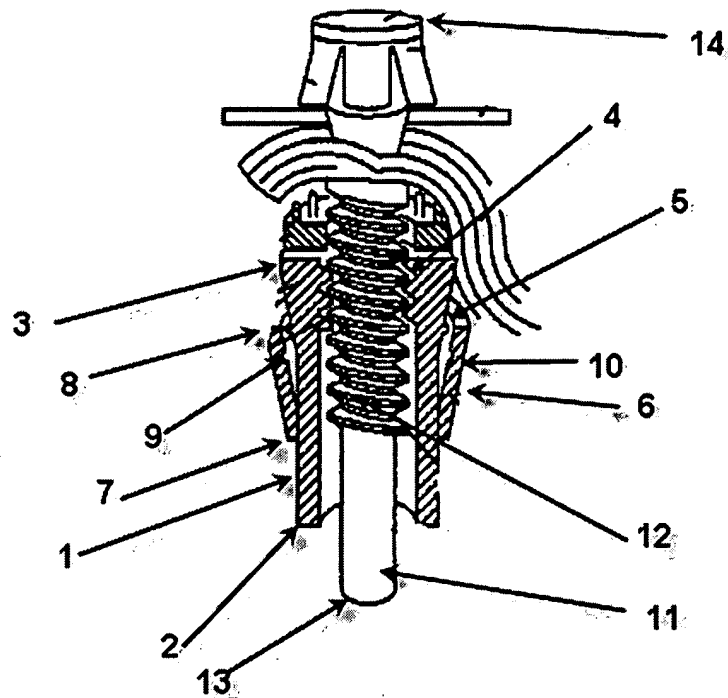
a collet member (1) having a base end (2), a top end (3), an inner engaging surface (4), and an outer ribbed surface (5) positioned about a central axis;

a compression ring member (6) having a base end (7), a front end (8), an inner ribbed surface (9), and an outer surface (10) positioned about a central axis;

said inner ribbed surface (9) of said compression ring member (6) being constructed and arranged for coaxial alignment and overlapping engagement with respect to said outer ribbed surface (5) of said collet member (1), said compression ring member (6) non-rotationally linearly traversable with respect to said outer ribbed surface (5) of said collet member (1) between a first release position and a second engaged position, wherein said engaged position results in said outer ribbed surface (5) of said collet member (1) and said inner ribbed surface (9) of said compression ring (6) compressing said collet member (1) and tensilely loading said compression

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ring (6) member to engage a shank member (11) having an outer gripping surface (12), and wherein said release position results in expansion of said collet member (1) thereby releasing said outer gripping surface (12) of said shank member (11).



Re: Claim 2, wherein said shank member (11) includes a first end (14) and a second end (13).

Re: Claim 3, wherein said ribbed outer surface (5) of said collet member (1) includes at least one outwardly and circumferentially extending rib (5), each said rib including a first ramp surface to facilitate coaxially aligned linear overlapping movement of said compression ring (6) in relation to said collet member (1) for engagement thereof, and a second ramp surface to facilitate linear removal of said compression ring (6) from said collet member (1).



Re: Claim 4, wherein said inner engaging surface (4) of said collet member (1) is constructed and arranged with a conjugate shape in relation to said outer gripping surface (12) of said shank member (11).

Re: Claim 5, wherein said inner engaging surface (4) of said collet member (1) constructed and arranged with internal threads (4).

Re: Claim 10, wherein said first end (14) of said shank member (11) includes a tensioning means (111E1 in Fig. 43), said tensioning means (111E1 in Fig. 43) being constructed and arranged to allow said shank member (11) to be tensilely loaded (via 6) prior to linear traversal of said compression ring member (6) into said engagement position with respect to said collet member (1).

Re: Claim 13, wherein said shank member tensioning means (111E1 in Fig. 43) includes at least one internal bore (111E1 in Fig. 43) extending inwardly from said first end of said shank member (14 in view of 111E1 in Fig. 43) along the longitudinal centerline of said shank member (11), wherein said at least one internal bore (111E1 in Fig. 43) is constructed and arranged for gripping and placing a tensile load (via 6) on said shank member (11) prior to linear traversal of said compression ring member (6) into said engagement position with respect to said collet member (1).

Re: Claim 17, wherein said outer ribbed surface (5) of said collet member (1) and said inner ribbed surface (9) of said compression ring member (6) are constructed and arranged to maintain an axially aligned interfitting relationship in said release position (with compression member (6) near the bottom of said collet member, (1)).

***Claim Rejections - 35 USC § 103***

[5] The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[6] Claims 19-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Batten, US-4,737,059, in view of case law.

Although the invention is not identically disclosed or described as set forth 35 U.S.C. 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a designer having ordinary skill in the art to which said subject matter pertains, the invention is not patentable.

The difference between the claims and Batten is that Batten does not expressly disclose the different materials that may constitute the parts of his device. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to create the device out of plastic (claim 19), copper (claim 20), brass (claim 21), bronze (claim 22), aluminum (claim 23), steel (claim 24), and/or rubber (claim 25), since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. It is also common knowledge to choose a material that has sufficient strength, durability, flexibility, hardness, etc. for the application and intended use of that material

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[7] Claims 19-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freedland et al., US-6,162,234, in view of case law.

Although the invention is not identically disclosed or described as set forth 35 U.S.C. 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a designer having ordinary skill in the art to which said subject matter pertains, the invention is not patentable.

The difference between the claim and Freedland et al. is that Freedland et al. does not expressly disclose the different materials that may constitute the parts of his device. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to create the device out of plastic (claim 19), copper (claim 20), brass (claim 21), bronze (claim 22), aluminum (claim 23), steel (claim 24), and/or rubber (claim 25), since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. It is also common knowledge to choose a material that has sufficient strength, durability, flexibility, hardness, etc. for the application and intended use of that material.

***Allowable Subject Matter***

[8] Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

However, note "precis" in claim 14 should be --precise-- for proper antecedent basis. km

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The following is an examiner's statement of reasons for allowance: the prior art, either alone or in combination with corresponding limitations as stated above, fails to teach or disclose wherein said internal bore includes internal threads.

***Response to Arguments***

[9] Applicant's amendment filed 7/21/2006 regarding rejections under 35 U.S.C. 102 have been fully considered. Due to the amendment to the claims, the prior art of both Archer and Weller fails to further anticipate. Accordingly, the Examiner has withdrawn all previous rejections over Archer, US-590, 294, and Weller, US-3, 618,135 as neither prior art discloses a compression ring member non-rotationally linearly traversable with respect to said outer ribbed surface of said collet member as taught by amended claim 1.

[10] Applicant's arguments filed 7/21/2006 regarding rejections under Freedland et al. under 35 U.S.C. 102 have been fully considered but they are not persuasive. Applicant primarily refutes the application of Freedland et al. in the instant set of claims stating that Freedland et al. does not disclose "an inner ribbed surface." The examiner disagrees. The examiner maintains that Freedland et al. does indeed disclose a compression ring member (6) having a base end (7), a front end (8), and an inner ribbed surface (9).

Further, upon further consideration of the amended claims, a new ground(s) of rejection is made in view of Batten, US-4,737,059. Please also note the additional notice of reference cited.

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**Conclusion**

[11] Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

[12] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272-7082. The examiner can normally be reached on 7:30 am-6:00 pm Monday-Thursday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached at (571) 272-7075. The fax number for the organization where this application or proceeding is assigned is the following: (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DCR

  
9/21/06

David Reese  
Assistant Examiner  
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Katherine Mitchell  
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